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Viewing cable 10MANAGUA19, By Decree Ortega Keeps Control of Key Positions

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Understanding cables

Every cable message consists of three parts:

- The top box shows each cables unique reference number, when and by whom it originally was sent, and what its initial classification was.
- The middle box contains the header information that is associated with the cable. It includes information about the receiver(s) as well as a general subject.
- The bottom box presents the body of the cable. The opening can contain a more specific subject, references to other cables ([browse by origin](#) to find them) or additional comment. This is followed by the main contents of the cable: a summary, a collection of specific topics and a comment section.

To understand the justification used for the classification of each cable, please use this [WikiSource](#) article as reference.

Discussing cables

If you find meaningful or important information in a cable, please link directly to its unique reference number. Linking to a specific paragraph in the body of a cable is also possible by copying the appropriate link (to be found at theparagraph symbol). Please mark messages for social networking services like Twitter with the hash tags **#cablegate** and a hash containing the reference ID e.g. #10MANAGUA19.

Reference ID	Created	Released	Classification	Origin
10MANAGUA19	2010-01-12 15:47	2011-08-30 01:44	CONFIDENTIAL	Embassy Managua

Appears in these articles:

<http://www.nacion.com/2011-05-30/Mundo/NotasSecundarias/Mundo2758456.aspx>
<http://www.nacion.com/2011-05-30/Mundo/NotasSecundarias/Mundo2758467.aspx>
<http://www.nacion.com/2011-05-30/Mundo/NotasSecundarias/Mundo2758468.aspx>
<http://www.nacion.com/2011-05-30/Mundo/NotasSecundarias/Mundo2758464.aspx>
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<http://www.confidencial.com.ni/articulo/3966/la-ldquo-injerencia-rdquo-de-ee-uu-en-el-2006>
<http://www.nacion.com/2011-05-23/Mundo/Relacionados/Mundo2758764.aspx>
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<http://www.confidencial.com.ni/articulo/4041/millones-de-dolares-sin-control-y-a-disicion>
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<http://www.nacion.com/2011-05-16/Mundo/NotasSecundarias/Mundo2757239.aspx>
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<http://www.confidencial.com.ni/articulo/3967/barreto-era-ldquo-fuente-confiable-rdquo-para-eeuu>

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INFO RHEFDIA/DIA WASHINGTON DC IMMEDIATE

RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC IMMEDIATE

RHMFISS/CDR USSOUTHCOM MIAMI FL IMMEDIATE

RHMFISS/DEPT OF JUSTICE WASHINGTON DC IMMEDIATE

RUCPDOC/DEPT OF COMMERCE WASHINGTON DC IMMEDIATE

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SUBJECT: By Decree Ortega Keeps Control of Key Positions

REF: A) MANAGUA 5 - OPPOSITION UNITY AND BENCHMARKS

B) 09 MANAGUA 1137 - OPPOSITION UNITY TALKS

C) 09 MANAGUA 1035 - COURT PERMITS ORTEGA'S RE-ELECTION

D) 09 MANAGUA 837 - OPPOSITION UNITY EFFORTS

CLASSIFIED BY: RobertJCallahan, Ambassador, State, Embassy Managua;
REASON: 1.4(B), (D)

¶1. (C) Summary: On January 9, President Daniel Ortega issued a decree extending the terms of over 20 public officials which are set to expire in 2010 if the National Assembly does not elect new authorities. These officials include all 10 of the now-discredited Supreme Electoral Council magistrates. The decree is widely considered unconstitutional and unnecessary, as the election and appointment of officials to other branches of government and to state institutions is the exclusive prerogative of the National Assembly. When taken with the governing Sandinista National Liberation Front's (FSLN) plurality of 38 of the 92 votes in the Assembly, this new decree ensures that Ortega's party will continue to control these state institutions. The opposition and civil society have called Ortega's action a "coup d'C)tat that will lead

to anarchy." End Summary.

An Unconstitutional Decree

¶2. (SBU) On January 9, during a speech to commemorate the third anniversary of his administration, President Ortega read a decree stating that if the National Assembly failed to elect new officials to the various branches of government and state institutions, the incumbents in these institutions would remain in office and their terms extended for "as long as the National Assembly does not name new officials or ratify the current officials." This decree immediately affects the following positions: two senior positions at the Human Rights Ombudsman office, all 10 of the Supreme Electoral Council (CSE) magistrates, four of the 16 Supreme Court (CSJ) justices, all eight comptrollers, and the Superintendent of Banks. NOTE: The terms of the Human Rights Ombudsman, Omar Cabezas, and his deputy expired on December 10, 2009. The terms of two CSE magistrates end in February; the other eight magistrates conclude their mandates in June. In April, the terms of the four CSJ magistrates expire, including CSJ Vice President and Ortega judicial operative Rafael Solis. The eight comptrollers conclude their terms in April and the Superintendent of Banks finishes his term in December.

¶3. (SBU) Legal experts, the political opposition and civil society have all described the decree as unconstitutional. Supreme Court President Manuel Martinez (aligned with the Constitutional Liberal Party, PLC), stated that Article 150 of the Constitution (which enumerated the powers of the presidency) does not grant the President the ability to "name, remove, or extend the terms of public officials," but rather this function rests solely with the National Assembly under Article 138. Moreover, Article 150 grants the President power to issue decrees only for "administrative purposes." Similar criticism came from Alejandro Serrano Caldera, the former Supreme Court Chief Justice during the first Ortega administration and an ex-FSLN member, who commented that one cannot defend the Constitution by violating it, and stated that with this latest action the Ortega administration became a "de facto government." The Citizens' Union for Democracy (UCD), a collection of civil society organizations, described Ortega's decree as a "coup d'Etat that will lead the country into anarchy." Ortega's decree drew criticism from the Catholic church, but also, for the first time, from several Evangelical denominations as well. COSEP, the umbrella organization of the Nicaraguan business community, also denounced the decree for provoking political uncertainty and harming the investment climate.

¶4. (C) Opposition members in the National Assembly called for various measures to respond to Ortega's decree, including presenting legislation to overturn the decree, filing charges for

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abuse of power with the Public Prosecutor, and introducing legislation to depose Ortega as president. Of these, legislation to overturn the decree is the most likely, but ultimately will depend on the political will of the PLC, which is instrumental in the legislature's administrative process of bringing bills to the floor. The removal of Ortega from office is unlikely as the FSLN could easily block such a measure and the Public Prosecutor's Office would be unlikely to pursue any abuse of power charge given that Ortega loyalists fill key positions in that institution.

The Implications of the Decree

¶5. (C) While the decree states that incumbents' terms are extended only if the Assembly does not elect new officials, in effect this ensures that these state institutions will continue to be loyal and friendly to Ortega's FSLN. The election of these public officials requires 56 votes of the 92 deputies in the legislature. The FSLN has 38 deputies, which leaves the opposition two votes shy of the 56 votes required and technically gives the governing party a veto in the election of the public officials. The FSLN deputies are very disciplined in their voting and are extremely unlikely to vote with the opposition. Moreover, in practice the various "opposition" blocs rarely vote together and have difficulty reaching a simple majority of 47 votes. In the past, these public officials were elected through PLC-FSLN power sharing agreements known as "El Pacto."

¶6. (C) Over the past few months, PLC honorary leader and former president Arnoldo Aleman has attempted to publicly distance himself from Ortega and the Pacto in an bid to position himself as the leader of the opposition ahead of the 2011 presidential elections (refs A, B, D). Members of his PLC party had publicly stated that the party would work with a united opposition to elect these public officials and that it would not negotiate with the FSLN. In recent weeks, this unity effort appeared to gain momentum and looked to be near an agreement among the opposition parties on the selection of nominees for the CSE. These new magistrates, had they been "non-partisan," would have been instrumental in shaping procedures for upcoming presidential elections in 2011, including election cycle dates, voter registration, composition of voter tabulation centers, and, possibly, could have challenged the CSJ's recent ruling that permitted Ortega to run for re-election (ref C).

¶7. (C) If the opposition's efforts had come to fruition and this unity bloc had proposed non-partisan CSE magistrates, this would likely have led to a legislative stalemate between the FSLN and the opposition, with neither having the 56 votes required to elect its

members to the various state institutions. For its part, the FSLN required a CSE that would not challenge Ortega's ability to be re-elected, and ideally a CSE that would permit electoral fraud similar to that of the 2008 municipal elections. This possible stalemate led to the speculation that these various government offices would go unfilled as they became vacant. In December 2009, when the Assembly concluded its yearly session, two initiatives were publicly proposed to address this possible scenario. The PLC presented legislation to form administrative councils at the various state institutions to have the senior technocrats continue administering the institutions. The FSLN, by contrast, had publicly discussed legislative initiatives to extend the terms of all the incumbents. With Ortega's decree, the FSLN gained the upper hand in its bid to retain control of these state institutions, as all the incumbents are guaranteed to continue in office until the National Assembly can vote, with a 60% majority (56 votes), to remove and replace them with new nominees.

Comment

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18. (C) Some government proxies have justified Ortega's actions by raising the specter of administrative chaos or a government paralyzed by the absence of duly-elected public officials. But it is unlikely that this motivated Ortega's decision for the decree. Rather, he likely feared the possibility of a new, "independent" CSE that could challenge his ability to run for re-election, and that would not countenance a repeat of the electoral fraud in 2011 as occurred in the 2008 municipal elections. With this decree, Ortega ensures these state institutions, one way or another, continue to be dominated with FSLN loyalists who support his re-election effort. We suspect this decree is the latest manifestation of the Aleman-Ortega Pacto or at a minimum was designed by the FSLN to create strong incentives for Aleman to continue to adhere to it. Ortega's decree permits Aleman to squeeze out from under the growing pressure he had faced from the opposition to help elect new, "independents" to the various state institution posts. Aleman can continue to profess his indignation at Ortega's actions without any further pressure to take irreversible steps that would demonstrate his intent to preserve and protect democracy. With the decree, Aleman no longer needs to concede anything to the opposition, and at the same time retains his piece of the power-sharing pie, as his allies too, remain in their various positions. In return, given the supermajority hurdle to replace incumbents, Aleman guarantees Ortega that the PLC assembly members, whom Aleman still tightly controls, give no aid to any serious opposition effort from the Assembly to replace these figures. The decree reinforces his Pacto co-dependency , ensuring his political future and fortunes remain closely intertwined with those of Ortega.

The Decree

19. (U) Following is an unofficial translation of the decree:

DECREE No. 3-2010

The President of the Republic

By the powers vested in the president by the Constitution

I

CONSIDERING

That the State of the Republic of Nicaragua is a democratic, independent, participative and representative country, whose branches of government are the legislative power, the judicial power and the electoral power, all coordinated amongst themselves and subordinate only to the principle of preference to the supreme interests of the Nation and to that established in the Constitution of the Republic of Nicaragua, according to articles 7, 129, 131, 132, 138, 144, 150, 158, 164, 168, 173.

II

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That in my capacity as Head of State and Head of Government, the Constitution makes me responsible for the harmonious coordination of the branches of government and State institutions of Nicaragua and before the vacuum of power created by the National Assembly by not appointing nor convoking the process to appoint the authorities of the branches of government or State institutions prescribed in numbers 7, 8 and 9 of article 138 of the Constitution of the Republic of Nicaragua it is my duty to avoid the judicial, political, economic and social insecurity and instability of the nation.

III

That the officials who comprise the judicial, electoral and other branches of government and State institutions established by the Constitution shall be elected by the National Assembly in the time stipulated in order to guarantee the respect for and true and material validity of the supremacy of the Constitution and therefore the fundamental rights and guarantees of the people of Nicaragua.

IV

That according to the Organic Law of the legislative branch, over 45 days have passed for the convening of the appointment of the officials mentioned. Since December 10, 2009, the people of Nicaragua find themselves without a human rights ombudsman; and in the coming months the composition of the constitutionally created branches of government and State institutions that serve as pillars to support the governance of the Nation of the people of Nicaragua will become partially or totally incomplete, which due to the lack of political will places in risk the economic and social

development of the nation. These are the electoral branch, the judicial branch, the Comptroller of the Republic, the Superintendent of Banks, among other institutions.

V

That on February 2, 2010 [sic], the terms of magistrates from the Supreme Electoral Council expire and on March 7 of this year are the regional elections of the Republic of Nicaragua's Caribbean Coast; however the National Assembly has not convened the corresponding election for those officials which would complicate the proclamation of the citizens elected in the voting stations to be carried out in the nation's North Caribbean and South Caribbean. Moreover, the electoral branch would be left without a governing body on June 1 of the current year, on the eve of the electoral process for the national elections of 2011.

VI

That on February 14, 2010, all the comptrollers' terms expire, 5 titular and 3 alternates, who comprise the Supreme Council of the Comptroller General of the Republic, this being a fundamental institution to guarantee the correct management of State goods and resources including the resources coming from international assistance, including multilateral financial organizations such as the World Bank and the IDB and the community of donor countries that comprise the budgetary support group; institutions and countries that require that the Comptroller General of the Republic certify and guarantee the management of these funds in order to disburse these same funds. If these authorities are not elected, the country is in grave risk of economic and social collapse.

VII

That there is legislation in the National Assembly that, violating the Constitution, attempts to unconstitutionally name in various branches of government and State institutions a council to administer these bodies, which demonstrates the lack of political will to elect (new authorities) and thereby adhere to the Constitution.

VIII

Considering that in the immediate past upon the failure to adhere to the constitutional obligation to elect officials, the institutions themselves have resorted to their own norms and regulations that establish the continuity of the incumbents until such time as the appropriate institution elects or ratifies the new officials, as was the case of the Central American Court of Justice and in the law of the Superintendent of Banks and Other Financial Institutions.

IX

In my capacity as Head of State and Head of Government, I ratify that as the responsible party for the harmonious coordination of all the powers and invoking the mandate given to me by the Constitution to comply with and make others comply with the Constitution, and that all officials also comply, as stated in articles 150 and 129 of the Constitution, the latter which subordinates all the powers and bodies of the State to the principal of preference to the supreme interests of the Nation, and based on all the aforementioned I find myself in the imperious necessity to declare the following decree:

DECLARED

The following:

DECREE

Article 1 - It is the obligation of the National Assembly to conduct in a timely fashion the elections and appointments of the officials established in article 138 numbers 7, 8 and 9 of the Constitution of the Republic of Nicaragua. Failure to proceed as described beforehand, would lead to a condition of unconstitutionality due to a legislative omission and this would constitute a crime against the Constitution of the Republic of Nicaragua.

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Article 2 - In the face of the failure of the aforementioned appointments a vacuum of power is created in the branches of government and State institutions that impedes the functioning and correct performance of these institutions. In virtue of the aforementioned and to avoid a vacuum of power, all the officials of the State's powers and institutions mentioned in the previous article whose mandate ends in the near future are ratified and their terms extended for as long as the National Assembly does not name new officials or ratify the current officials.

Article 3 - This decree will enter into force upon its publication in any nationally circulated media without prejudice by the later publication in La Gaceta (Federal Registry), the Official Journal.

Given in the City of Managua, seat of the Government, on the ninth day of the month of January in 2010.

//s//

Daniel Ortega Saavedra

President of the Republic of Nicaragua

//s//

Paul Oquist Kelley

Private Secretary for

Domestic Policy
CALLAHAN